

Appl. No. 10/764,903
Amdt. dated August 15, 2005
Response to Office Action of July 22, 2005

REMARKS/ARGUMENTS

This paper is submitted in response to the Office Action mailed July 22, 2005. At that time claims 1-3 and 5-20 were pending in the application. In the Office Action, the Examiner required Applicant to elect one group for prosecution from a list of four species. Species I corresponds with the embodiment described in figures 1-7, species II corresponds with the embodiment described in figures 8-14, species III corresponds with the embodiment described in figure 15, and species IV corresponds with the embodiment described in figure 16.

Applicant would like to thank Examiner Conley for the telephonic interview conducted on August 10, 2005, with Applicant's counsel Matthew S. Bethards. All pending claims were discussed generally, with respect to Examiner Conley's election requirement. Applicant asserted that the election requirement was not proper. However, no agreement was reached regarding the same.

Therefore, in response to the election requirement, Applicant provisionally elects prosecution of species IV (figure 16), with claims 6-11 and 18-20 that are readable thereon. However, Applicant traverses the Examiner's election requirement as not meeting his burden of demonstrating that examining the claims in this application would constitute a serious burden under MPEP §803.

As discussed in the telephonic interview, the timing of the election requirement is unusual. On March 24, 2005, the Examiner issued a final Office Action, in which claims 6-11 were allowed and claims 4 and 5 were found allowable, while claims 1-3 were rejected as either anticipated or obvious. Applicant filed an RCE and a response to the Office Action on June 23, 2005. Claims 1 and 3 were amended to overcome Examiner's anticipation and obviousness rejections, respectfully. Claim 6 was amended to address the §112 issues raised. In addition, Applicant added new claims 12 through 17 which read on what the Examiner indicates is species II (figures 8-14), and new claims 18-20 were added which read on what the Examiner indicates is species IV (figure 16).

By the time of Applicant's filing of its response and RCE, the Examiner had already conducted a search relating to species I (figures 1-7), species III (figure 15) and species IV (figure 16), and already conducted a substantive examination on the corresponding claims at

Page 7 of 8

SaltLake-258141.1 0062716-00004

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least twice. See Office Actions, dated September 21, 2004 and March 24, 2005. The only species to which Examiner had not yet substantively examined was species II (figures 8-14).

According to MPEP 803, "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." The Examiner has not demonstrated that the examination and search of the allegedly different species would create a serious burden. In fact, the Examiner cannot make this required showing because the Examiner has already examined the claims twice and conducted a search. Consequently, there is no burden and Examiner's four-way election requirement is improper.

If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,



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